

**APR 25 2006**

**CATHY A. CATTERSON, CLERK**  
**U.S. COURT OF APPEALS**

**NOT FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

MICHAEL COCHRAN,

Petitioner - Appellant,

V.

PATRICIA GORMAN,

Respondent - Appellee.

No. 05-35419

D.C. No. CV-04-00103-CI

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the Eastern District of Washington  
Cynthia Imbrogno, Magistrate Judge, Presiding

Submitted January 26, 2006<sup>\*\*</sup>  
Seattle, Washington

Before: RAWLINSON and CLIFTON, Circuit Judges, and BURNS<sup>\*\*\*</sup>, District Judge.

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

<sup>\*\*\*</sup> The Honorable Larry A. Burns, United States District Judge for the Southern District of California, sitting by designation.

1. The determination that the state trial court did not abuse its discretion in denying Michael Cochran's untimely motions to substitute counsel was not contrary to or an unreasonable application of clearly established federal law, and was not based upon an unreasonable determination of the facts under 28 U.S.C. § 2254(d). *See United States v. Garcia*, 924 F.2d 925, 926-27 (9th Cir. 1991). Because there had been multiple continuances before Cochran moved to substitute counsel days before the scheduled trial, and because Cochran fails to show prejudice, he cannot overcome the broad discretion afforded to trial courts on matters of continuances. *See United States v. Schaff*, 948 F.2d 501, 504-05 (9th Cir. 1991); *see also Morris v. Slappy*, 461 U.S. 1, 11-12 (1983).
  
2. We decline to expand the scope of Cochran's certificate of appealability to include the uncertified issue of ineffective assistance of counsel, because Cochran fails to make a "substantial showing of the denial of a constitutional right." *Barker v. Fleming*, 423 F.3d 1085, 1089 n.1 (9th Cir. 2005) (quoting 28 U.S.C. § 2253(c)(2)).

**AFFIRMED.**